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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/741,793	12/19/2003	Alan E. Hairsine	32210.20.0	5589

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INTELLECTUAL PROPERTY GROUP  
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MINNEAPOLIS, MN 55402

EXAMINER
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WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

MAIL DATE	DELIVERY MODE
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05/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/741,793		HAIRSINE ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Anthony Weier		1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-71 is/are pending in the application.
- 4a) Of the above claim(s) 3,4,19,27-54,57 and 58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-18,20-26,55,56 and 59-71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of in the reply filed on 2/20/07 is acknowledged. The traversal is on the grounds that there is no serious burden in searching all of the invention. This is not found persuasive because the search areas and strategies involved with searching each invention are not commensurate with one another.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 55, 56, 59-63, 65-68, and 71 are rejected under 35 U.S.C. 102(b) as being anticipated by Shimizu.

Shimizu (cols. 2 and 3) discloses a process wherein eggs are mechanically and automatically conveyed (e.g. col. 1, lines 51-55; col. 2, lines 8-13; col. 3, line 30- col. 4, line 8) and subjected to breaking with cutters (8; i.e. knives) wherein the contents of same (including yolks) are deposited into a plurality of molds (each having a symmetrical and rounded outline) all connected (the outer molds providing a closed loop of the plurality) wherein said molds have a first depression with a second depression

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disposed inside the first (thus providing an irregular shaped bottom surface for the molding said eggs), said yolk being allowed to settle in the second depression (e.g. 13b or 13c), said eggs then being cooked after moving said molds to a heating area, and said eggs being cooled (e.g. frozen). In order to package, consumer same, etc., it is inherent that said eggs would be removed from the molds as also called for in claim 55.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 5-9, 11-16, 21, 22, 59-62, 64, 65, and 67-71 are rejected under 35 U.S.C. 102(b) as being anticipated by Stearns et al.

Stearns et al (e.g. Fig. 2; cols 2 and 3) discloses a process wherein the contents eggs (yolks previously broken) are deposited into a plurality of molds (e.g. irregular shaped) wherein said molds are arranged side by side as called for in claim 12, said eggs then being cooked in said molds, and subsequently cooled (e.g. frozen). It should be noted that the egg yolks would inherently be ruptured when falling through a propeller type mixer wherein it is considered expected that the propellers have sharp edges and are contained within an orifice area of the mixer (Example 1).

6. Claims 59-62, 67, 69 and 71 are rejected under 35 U.S.C. 102(b) as being anticipated by Dunckel.

Dunckel discloses a process wherein eggs are mechanically and automatically conveyed and subjected to breaking with knives (92) wherein the contents of same

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(including yolks) are deposited into a plurality of molds (each having a symmetrical shape) all connected, said eggs then being cooked after moving said molds to a heating area, and said eggs being removed from said pans, and subsequently cooled. Dunckel further discloses an embodiment wherein the yolks are broken through mixing to create a scrambled egg mixture that is deposited in the molds (cols. 2-4; Figures).

7. Claims 21, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Lanoie.

Lanoie discloses a process wherein egg yolks and whites from cracked eggs are dropped through an orifice of a device (having at least four orifices) for mixing same wherein blades (having sharp edged) used therein would inherently rupture the egg yolk sacs (see 1 in Figure 1).

8. Claims 21, 22, and 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 87/03171.

WO 87/03171 discloses a process wherein egg yolks and whites from cracked eggs are dropped into a device wherein said device comprises multiple orifices (for each egg; e.g. claim 28) having sharp inwardly protruding edges (via the pin 100 or its equivalent, page 12) which rupture the egg yolk sacs (e.g. Figure 10D).

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 2, 12-14, 18, 20, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimizu taken together with any one of Stearns et al, Stier, and Matter.

The claims further call for said molds to be irregularly shaped. However, it is well known to provide irregularly shaped molds for preparing eggs as set forth in Stearns et al (col. 3, lines 1-19), Stier (see Figures), and Matter (see Figures). It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided such shaping molds as a matter of preference with regard to the aesthetics of the final product.

11. Claims 1, 2, 5-9, 11-16, 64, 65, 67, and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunckel taken together with any one of Stearns et al, Stier, and Matter.

The claims further call for said molds to be irregularly shaped and/or a round shape. However, it is well known to provide irregularly shaped molds for preparing eggs as set forth in Stearns et al (col. 3, lines 1-19; irregular and round shape), Stier (see Figures), and Matter (see Figures). It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided such shaping molds as a matter of preference with regard to the aesthetics of the final product.

12. Claims 8, 9, 11, 15, 16, 64, 65, 67, and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunckel taken together with any one of Stearns et al, Stier, and Matter and further in view of Lanoie and claim 70 under 35 USC 103(a) as being unpatentable over Dunckel taken together with Lanoie.

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If it is shown that the mixer of Dunckel does not provide the sharp edge yolk rupturing for eggs passing through, it should be noted that mixing devices that perform such function are notoriously well known as set forth, for example, in Lanoie. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included such mixing device as the mixing device in Dunckel as a matter of preference depending on, for example, availability or the cost of same.

13. Claim 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunckel taken together with any one of Stearns et al, Stier, and Matter and further taken together with Lanoie and further in view of any one of Davis, Cunningham, and Shimizu and claims 55, 56, and 66 are rejected under 35 USC 103(a) as being unpatentable over Dunckel taken together with any one of Davis, Cunningham, and Shimizu.

The claims further call for said mold to comprise a first depression and a second depression within said first. However, such molds for eggs are notoriously well known to aid in providing demarcation between the yolk and white portions as taught, for example, in any one of Davis, Cunningham, and Shimizu. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included same to provide a product having a particular desired aesthetic (uniformity, shape, color distribution, etc.)

14. Claims 10, 17, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stearns et al taken together with WO 87/03171.

The claims further call for the eggs being dropped through a plate having sharp inwardly protruding edges. WO 87/03171 teaches a method of breaking egg yolk sacs

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using pins (e.g. 100) which are sharp and inwardly protruding. It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated such yolk breaking step in order to facilitate easier subsequent mixing of yolks and whites. It should be noted that if the rupturing means of pins are not considered to be inwardly protruding edges, WO 87/03171 further discloses the use of equivalent means to achieve such purpose, and clearly the use of sharp knives or other protruding cutters would provide the same rupturing action.

The claims further call for the use of plural edges within a single plate. However, absent a showing of unexpected results, it would have been further obvious to have increased the number of such pins to increase the number of ruptures as a result effective variable.

15. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 87/03171.

The claims further call for the eggs being dropped through a plate having sharp inwardly protruding edges. WO 87/03171 teaches a method of breaking egg yolk sacs using pins (e.g. 100) which are sharp and inwardly protruding. It should be noted that if the rupturing means of pins are not considered to be inwardly protruding edges, WO 87/03171 further discloses the use of equivalent means to achieve such purpose, and clearly the use of sharp knives or other protruding cutters would provide the same rupturing action.

The claim further calls for the use of plural edges within a single plate. However, absent a showing of unexpected results, it would have been further obvious to have



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increased the number of such pins to increase the number of ruptures as a result effective variable.

***Prior Art***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier  
Primary Examiner  
Art Unit 1761

Anthony Weier  
May 10, 2007



S/10/07